

12. ATTORNEYS' FEES 34 CFR §300.517 and NC 1504-1.18

In any action or proceeding brought under IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to NCDPI or LEA, **to be paid by your attorney**, if the attorney filed a petition or court case that the court finds is frivolous, unreasonable, or without foundation or continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

In any action or proceeding brought under IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to NCDPI or LEA, **to be paid by you or your attorney**, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay or unnecessarily increase the cost of the action or proceeding.

Note: North Carolina's Administrative Law Judges cannot award attorneys' fees.

AWARD OF FEES

A court awards reasonable attorneys' fees as follows:

- Fees must be based on the rates established in the community in which the hearing was held for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded;
- Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under IDEA for services performed after a written offer of settlement to you if:
 - The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
 - The offer is not accepted within 10 calendar days; and
 - The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement;
- Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer;
- Fees may not be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action; and
- Fees also may not be awarded for mediation as described under the heading **Availability of Mediation**.

A resolution meeting, as described under the sub-heading **Resolution Process**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under IDEA, if the court finds that:

- You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
- The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing you did not provide to the LEA the appropriate information in the due process petition as described under the sub-heading **Due Process Petition**.

However, the court may not reduce fees if the court finds that the State or LEA unreasonably delayed the final resolution of the action or proceeding or there was a violation under the Procedural Safeguards provisions of IDEA.

→ In Other Words...

If you win the case, the court may decide that the LEA must pay your attorney's fees, if you have an attorney.

→ The court may decide that your attorney must pay the LEA's costs and/or the NCDPI's costs, if any, if your attorney filed a petition that was trivial, unreasonable, or without any basis; or if your attorney continued the case after it became clear that it was trivial, unreasonable, or without any basis.

→ The court can decide that you or your attorney must pay the LEA's costs and/or the NCDPI's costs, if you filed due process for inappropriate reasons, such as to harass, cause unnecessary delay or increase the cost of the action or proceeding.

→ Attorneys' fees are based on the average rate in the community where the attorney practices.

→ If a written settlement offer is made more than 10 days before the hearing begins, and you do not accept the offer within 10 days, the court may not order the LEA to pay your attorney fees if it learns that the decision or ruling was less favorable than the settlement offer.

→ However, the court may order the fees to be paid if you win the case and it is decided you were right to reject the settlement offer.

→ Fees cannot be paid for IEP Team meetings, mediation, or a resolution meeting.

→ The court can reduce the amount of the attorneys' fees if it finds that you or your attorney unreasonably delayed the final resolution, the fees unreasonably exceed the usual hourly rate in the attorney's community, the time and legal services were more than normally required for that type of action, or you or your attorney did not provide the LEA with the appropriate information in the due process petition.

→ The court cannot lower the attorneys' fees if the State or LEA unreasonably delayed the final resolution or there was a violation under the Procedural Safeguards.